

# Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

## **GOVERNOR REAPPOINTS COMMISSIONER McMAHAN**



The Commission is pleased to announce that Governor Paul E. Patton reappointed Arvel "Jerry" McMahan to the Commission on October 9th, 2003. This will be Mr. McMahan's second four-year term. Commissioner McMahan was first appointed to the Commission on September 23, 1999 and served as Chairman in 2002.

Mr. McMahan is the principal broker of Coldwell Banker McMahan Company. He has offices in eleven cities in Kentucky, and he supervises 287 licensees. He began his real estate career in 1968 and became a broker in 1974.

Mr. McMahan graduated from Oldham County High School and Tennessee Tech University. He became a member of the Greater Louisville Association of Realtors® and the Kentucky Association of

Realtors® in 1975 and has been active in both organizations.

Mr. McMahan is also extremely active in his community. He serves as a Board member for The Bank of Oldham County. He is also a member of the Advisory Council for the Louisville Water Company.

Mr. McMahan has been a valuable member of the Kentucky Real Estate Commission. He is dedicated to the industry and takes pride in his role at the Commission. He says, "I have so enjoyed my last four years serving as your Commissioner. I am proud of the tasks we have accomplished and look forward to the next four years."

Mr. McMahan resides in Pewee Valley with his wife, Carol. They have two daughters, Molly and Kristy, and three grandchildren, Quinn, Mackie and Cam.

**We Need Volunteers  
for the Commission's  
New On-Line Renewal**  
*See page 5 for details*

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## **Kentucky Real Estate Commission**

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Louisville

**Arvel J. McMahan,**  
Pewee Valley

**Ron Smith**  
Louisville

**Sue Teegarden**  
Alexandria

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Director of Administration

Kim Brewer  
Louis Carter

## **Comments from the Chair**

by: **Bob Roberts,**  
Chair



**I** am very excited to have the opportunity to be your new Chair for the upcoming year. I am looking forward to working with many of you and hopefully meeting some new faces.

Although our nation has experienced loss of growth and our state is in the middle of a budget deficit, real estate seems to be strong. I attribute that to the hard work and dedication of all of our licensees.

Here at the Commission, we have seen an increase in our numbers. We tested approximately 500 more applicants this year as compared to last year and we have about 300 more active licensees as compared to last year. We also had a huge increase in the number of licensees who purchased group errors and omissions insurance. We currently have 85% participation in the group plan.

Complaint numbers are running about the same as last year, with just a slight decrease. Last fiscal year, the Commission received 164 complaints. If you break down the percentage of complaints versus the number of licensees it works out to about 1.2%. I think that figure is a tribute to the industry.

Although complaint numbers are staying about the same, the num-

ber of unlicensed brokerage cases has increased tremendously. The Commission is taking a very active role in policing unlicensed persons from coming into Kentucky and receiving commissions illegally. We have listed the unlicensed brokerage cease-and-desist orders on page 8 of this newsletter.

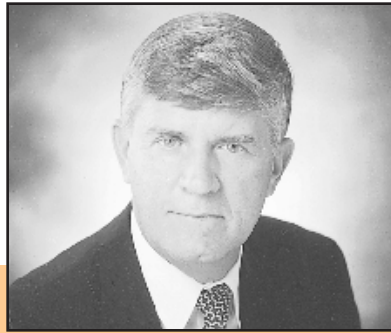
At the September 18, 2003 Commission meeting, four cases of potential unlicensed brokerage were referred to County Attorneys' Office for criminal prosecution. If you are ever unsure about an individual being licensed in Kentucky, remember that you can look up individuals on our website ([www.krec.net](http://www.krec.net)) to ensure that they have a valid Kentucky real estate license. As always, if you ever suspect that someone is operating without a license, please report the activity to the Commission.

In closing, keep up the good work, and I hope everyone has a wonderful Thanksgiving and Holiday Season.



## From the Director's Desk

by: **Norman E. Brown,**  
Executive Director



I am so happy to be able to use this space to let you all know about a new advertising campaign that the Commission is getting ready to sponsor. The Commission is working with several radio stations throughout the state to develop advertisements that will promote the use of real estate licensees when buying and selling a home. This advertising campaign is in response to the increase in the number of homes being sold by owner and the number of unrepresented buyers.

The Commission of course believes that consumers are better protected and better prepared when selling or buying real estate through a licensed agent or broker.

The radio spots, which will be heard across the state for a four-to-six week period in January and February of 2004, will feature statements from licensees and consumers about how using a licensed agent or broker is better than being unrepresented.

Make sure to listen for these spots on ClearChannel stations in Central Kentucky, on WBKR and WKYO in

Western Kentucky and on WQHY in Eastern Kentucky.

This radio advertising campaign is an extension of the Commission's clear commitment to getting the word out to consumers that using a licensee will benefit them in all their real estate transactions. The Commission has also sponsored several first-time homebuyer seminars throughout the state and held a booth at the Kentucky State Fair to promote the real estate industry and the use of licensees.

As with all of the Commission's programs, we seek your input and guidance on what is benefiting you in your day-to-day practice. Please provide us any feedback you may have on the advertising campaign or contact us with additional ideas on how to best protect consumers and promote the industry at the same time.

This year marks my fifth year as your Executive Director. It has been most enjoyable working with our Commissioners, our staff and you, the licensee. Please continue to call if you need our help.

## **DON'T FORGET TO COMPLETE YOUR 2003 CONTINUING EDUCATION HOURS**

December 31, 2003 is right around the corner. All active licensees (except those who were licensed in Kentucky prior to June 19, 1976) must complete six (6) hours of continuing education by December 31, 2003 or face penalties and possible suspension. Keep in mind that three (3) of the six (6) hours **MUST** be in real estate law. Licensees **MUST** complete the Kentucky Core Course once every four (4) years. Example, if you took the course in 1999, you would be required to complete the course by the end of 2003. Taking the Core Course will fulfill your six (6) hour continuing education requirement and no other continuing education is needed that year. If you ever have questions regarding your compliance date, please call Sarah West at the Commission. For a complete list of continuing education providers, please refer to our website at [www.krec.net](http://www.krec.net) under Education.

## ***Continuing Education Suspensions***

**The following licensees were suspended for a six-month period beginning September 1, 2003 for failing to complete the requirements of the 2003 Continuing Education Delinquency Plan:**

**Helen Fenske, Louisville  
Karen Isaac, Louisville  
David Jaquith, University Park, FL  
Rhonda Kirkland, Winchester  
Kenneth R. Locke, Jr., Marion  
Chris McQueary, Russell Springs  
Lisha M. Reynolds, Owensboro  
Vernecia Shivers, Clarksville, TN  
Michael K. Wells, Atlanta, GA  
Carol Otis, Mt. Sterling.**



## Commissioner's Corner



Betty Kaiser



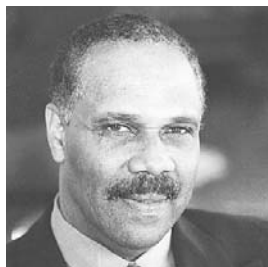
Arvel J. McMahan



Sue Teegarden



Bob Roberts



Ron Smith

# INDUCEMENTS

## *Still Prohibited Under the Law*

By: *Shelly Cameron*  
*Director of Administration*

At the September 18, 2003 Commission meeting, amending the inducement prohibition was a hot topic. A show of hands was taken at the meeting, and the majority of attendees were overwhelmingly in favor of lifting the ban on inducements in Kentucky.

Many of you will remember that the Commission and the Kentucky Association of Realtors® formed a joint task force in early 2000 to review amending the regulation to allow inducements in Kentucky. After a public hearing and many hours of research, the task force concluded that the regulation prohibiting inducements should not be amended due to a lack of consensus.

Now, three years later, discussions have begun again about looking into amending the inducement prohibition. The Commission is in the process of reviewing the laws and regulations of Kentucky's border states. Kentucky is one of the few states that still prohibits inducements. We will keep you posted on the progress of this extremely sensitive subject.

During the course of reviewing inducements in Kentucky, please keep in mind that licensees are **strictly prohibited** from offering inducements to potential customers and clients in Kentucky. Under KRS 324.160 (4)(m), offering prizes for purpose of influencing a purchaser or prospective purchaser of real estate is grounds for suspension, revocation of license, issuance of reprimand, levying of fines or ordered education. Rebates are also illegal under 201 KAR 11:121.

As defined in 201 KAR 11:011(5), licensees are allowed to offer refreshments, such as a snack or soft drink, at an open house. Licensees can also give a closing gift that has a value of less than

\$100.00. A closing gift must not be offered prior to closing. That is basically the extent of what licensees can offer to potential clients or customers. Anything beyond that is most likely going to be considered an inducement.



Keep in mind that you can disseminate information about inducements offered by the seller or client as long as it is clearly noted that the inducement is not coming from the licensed agent. For example, if your seller wants to give away a television, any advertisement associated with that inducement must have a disclaimer explaining that the television is not being offered by the licensed agent. It should always be clear and in writing that the licensee is in no way involved with any giveaways or prizes.

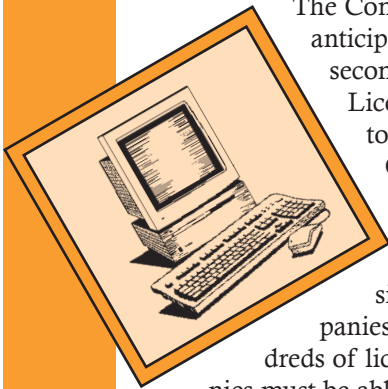
The Commission has seen an increase in the number of violations of the inducement prohibition. If the law is going to remain "as is," the Commission will have to take a stronger stance on this issue in an effort to stop licensees from illegally inducing customers and clients. As always, if you become aware of a licensee offering an inducement, please contact the Commission.



### Brokerage Management Course Wins First Place

We are pleased to announce that the Association of Real Estate License Law Officials awarded the Commission's New Brokerage Management Course first place for outstanding pre-license course.

# ON-LINE RENEWAL FOR 2004/2005



The Commission is excited about the anticipated implementation of our second year on-line renewal trial. License year 2004/2005 is going to be a test run for the Commission. We are seeking 50 companies to volunteer to renew on-line. We need companies of all sizes-- from one person companies to companies with hundreds of licensees. Volunteer companies must be able to renew by means of a credit card and have Internet access with an email address. The Commission will issue passwords through email which will allow companies to access our on-line renewal program. Then compa-

nies simply follow the screens and pay on-line.

If your company is interested in assisting the Commission with this new process, please email our Executive Director, Norman Brown at [Norman.Brown@ky.gov](mailto:Norman.Brown@ky.gov). In your email, please include your company name, principal broker name, phone number and email address.

The Commission is also requesting that companies make changes prior to February 15, 2004. Many companies wait until renewal to either add or drop licensees. It would greatly help the on-line renewal process if companies would try to do this at the beginning of the year. Just make it your New Year's Resolution.

Again, we want to thank all of the licensees for helping out at renewal.

## Resident Screening During a Soft Rental Market

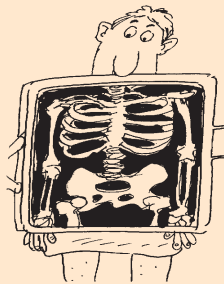
By Rob Massey, Jr., CPM

While the real estate sales across this country continue doing well with our economy in a sluggish state, rentals have experienced a widespread slump unlike any seen before by most active property managers today. Most experts agree the reasons are as follows:

- 1) With near record low interest rates many renters have bought houses and condominiums getting their piece of the American Dream.
- 2) High unemployment rates have kept many first-time renters at home with their parents either waiting for a higher-than-minimum-wage job or for employment itself.
- 3) Most "Baby Boomers" are now homeowners. This bulge in our population sustained most of the rental market for many years.
- 4) "Echo Boomers", the children of Baby Boomers who comprise the 20 to 34 year olds, are not expected to have a significant positive impact on rentals until 2007 according to a recent Fannie Mae report.

The only real positive factor contributing towards our rental market is that immigration is continuing to increase. In 2001, some 1,064,000 people legally immigrated to this country, up from

647,000 just two years before. Immigrants typically rent for the first five years of their living in this country.



With these existing conditions, resident screening seems to be less of an issue than resident finding. But, as anyone in this business for very long knows, resident screening is still a very vital function to the long-term success of a residential real estate investment.

Many property managers today are utilizing some new methods for taking another look at a segment of the rental market that until recently was largely rejected by many. Persons, who have less than a pristine credit history, but otherwise may qualify, characterize this segment. The new innovative approaches include: focusing less on credit and more on rental or housing history, requiring marginal applicants to take a credit counseling class as a condition for their being approved, allowing lower score applicants to rent contingent upon their paying a rent deposit in addition to a security deposit, enabling persons from

this group to rent with a qualified guarantor and finally utilizing an online screening service which keeps a very up-to-the-minute list of persons under eviction or who have just skipped from a rental unit.

Since humans are for the most part creatures of habit, keeping credit history as a factor in resident screening is important, but putting more emphasis on housing history in my view is more critical to arriving at an up or down vote on a new tenant especially during these economic times. Our company allocates 25% of our weighted score to credit history and 50% to housing history over the last five years. The remaining 25% is rated based on the stability of the applicant's income assuming that sufficient income exists in the first place. Many times credit reports also reveal addresses that are not written on an application. These addresses frequently will unveil an undisclosed negative rental history. So make sure that the current and previous addresses from the credit report match those on the application.

Some large management companies across the nation are now requiring marginal applicants to take a credit counseling class that the companies teach. Classes taught by credit counseling agencies may be available in your area, which could be made a condition of an applicant approval.

A rent deposit is a good tool to use for

*Continued on Page 11*

## BUYER'S AGENCY:

### *Points to Remember When Representing the Buyer*

By: *Lee B. Harris,*  
*General Counsel*

The age of buyer's agency is upon us. In many transactions across the state, the buyer is represented by one agent and the seller is represented by another agent. In some cases, this is via a cross-sale between two companies and in some instances this is via designated agency within the same company. Nevertheless, buyer's agency entails very specific duties and responsibilities.

First of all, a buyer's agent should know the contract that he or she is using. Read over the contract from time to time. Contracts are constantly changing, and you need to know the precise language in the one you are using. If you do not and the language has changed, you may find yourself caught in a pickle.

Moreover, make sure that your client understands the offer/contract and is comfortable with all of the terms contained therein. The buyer's agent should explain issues, such as "time is of the essence," to the buyer when preparing the offer. Let the buyer know his or her options, and then put those options in the offer to purchase.

Second, the buyer's agent should make sure that the buyer understands the numerous deadlines that appear in most contracts and should ensure that the buyer abides by each and every one of those deadlines. For example, if the buyer contracts to apply for financing within "x" number of days, the buyer's agent should make sure that the buyer knows this is the requirement and follows through on it. Likewise, if the buyer is to have an inspection within "x" number of days, the buyer's agent should make sure that the inspection is performed within that timeframe.

If a list of repairs is to be delivered to the seller within a certain timeframe, then the buyer's agent should ensure that the list is, in fact, delivered in that timeframe.

Third, it is the buyer's agent's responsibility to make sure that the earnest money agreed to in the purchase contract is collected and deposited or delivered to the seller's agent for deposit. If the buyer, for whatever reason, does not come through with the earnest money as promised, the buyer's agent must notify the seller or the seller's agent. If the buyer is going to pay the



deposit at some time in the future, make sure this is reflected in the purchase contract. Do not use the boilerplate language that states that the money has been deposited if, in fact, it is going to be deposited in a week's time. This could potentially put the buyer in immediate breach of the contract.

Fourth, if deadlines are missed and there is a verbal agreement between the parties to extend those deadlines, get the extension in writing. Make sure all parties sign the extension. Do not ever rely upon a verbal commitment to change the written agreement. Memories fade, but written documents stay the same over time.

Fifth, if there are blanks in the boilerplate contracts that need to be filled in, make sure that every blank is either filled in or crossed out and initialed, dated and timed. Do not leave paragraphs blank without crossing them out, because there could be a question in the future as to whether that paragraph was inten-

tionally left blank. In addition, if there are boxes to be checked, then check the appropriate boxes or cross out the section and initial, date and time it. Be careful to read the contract. If the instructions say to check only one box or to choose one, then check only one box or choose only one.

Sixth, obtain the signatures of all the parties on the purchase contract. Do not allow or rely upon the husband to sign for the wife or vice versa. If someone has not actually signed the agreement or given their power-of-attorney to someone else to sign on their behalf, then they are not bound and could protest the agreement. Further, make sure all signatures on the contract are dated and timed. These facts can become important if a dispute arises. Besides that, it's the law! (Please see 201 KAR 11:250.)

Next, make sure the buyers receive a copy of everything they have signed. Go over each document with the buyer and make sure they understand each document. Never fail to give a buyer agency disclosure forms. Also, it is your job to ensure that the buyer receives a Seller's Disclosure Form. If the buyer has questions, pose them to the appropriate person. If the home was built prior to 1978, make sure the buyer receives a lead-based paint disclosure form.

Finally, make sure that the contract is complete. If there are items in the listing contract that the buyer would like to stay with the property, specifically outline each item in the purchase contract. Do not assume that the seller will leave any item just because it is in the listing. In addition, if there is an obvious defect in the home, address that in the offer to purchase. Do not wait until the inspection period to ask for repairs for something that you knew of at the outset. The inspection is to uncover hidden or latent defects with the home, not obvious problems. If the buyer has a home to sell, make

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## Education, Research and Recovery Fund Annual Statement of Income and Expenses Fiscal Year Ending June 30, 2003

<b><u>Income FY 2002/2003</u></b>			
Exam Recovery Fee	\$ 42,990	Speaker Fees	2,600
Reciprocal Recovery	2,340	Room Rental	2,079
Renewal Recovery	597,580	Postage/Parcel Delivery	2,482
Core Course	7,422	Postage/Meter & Bulk	53,326
Fines	2,450	Printing State	10,895
Education Fines	55,400	Printing Vendor	10,562
Investment Income	99,746	State Fair	5,741
Restitution	10,700	Cassettes/Books	1,712
Prior Year Grant Refund	59,218	In-State Travel	12,709
		Airfare	4,028
		Out of Pocket Expenses	403
		Lodging	10,668
<b>TOTAL INCOME</b>	<b>\$877,846</b>	Meals	1,723
		Mileage	776
<b><u>Expenditures FY 2002/2003</u></b>		Registration Fees	8,108
Personnel	\$183,642	Transportation	1,208
Legal Services	12,740	Subpoenas/Court Fees	2,210
Continuing Ed. Services	63,628	Subscriptions	5,706
Investigative Services	101,009	Seminar Refreshments	5,192
Carpool	541	College Grants/Scholarships	262,664
Court Reporter	916	<b>TOTAL EXPENDITURES</b>	<b>\$767,268</b>

### **BOB ROBERTS** **ELECTED CHAIR**

Bob Roberts was elected as the new Chair of the Commission on October 16, 2003. Bob has served on the Commission since 1990 and also served as Chair in 1992 and 1996. He graduated from Eastern Kentucky University and is the owner of Bob Roberts Insurance in Richmond, Kentucky.

### **SUE TEEGARDEN** **ELECTED VICE-CHAIR**

Sue Teegarden was elected as the new Vice-Chair of the Commission on October 16, 2003. Sue has served as a Commissioner since 1992 and served as Chair in 1995 and 2000. She has held a real estate license since 1966 and is with Star One Realtors in Ft. Mitchell, Kentucky.

## ***STAFF SPOTLIGHT***



We are so pleased to have Denise Payne Wade (Alexandra) join our Legal Department at the Commission. Denise was hired as our Staff Attorney on May 1, 2003. She brings to the Commission her experience handling administrative cases, having held the position of Staff Attorney at the Public Service Commission and the Department of Insurance and Assistant General Counsel for the Board of Medical Licensure. Denise also brings to the Commission her experience as a Commissioner for the Kentucky Commission on Human Rights and her training as a hearing offi-

cer and mediator.

Denise, who is originally from Shelbyville, attended Western Kentucky University and the University of Louisville, where she obtained her law degree. She resides in Louisville and is the proud mother of four children. Her son, Michael (age 22) attends Eastern Kentucky University. Her twin daughters, Melinda and Melissa (age 20), are also attending college. Melinda attends Western Kentucky University and Melissa attends the University of Pittsburgh. Faith (age 10) is an honor student at Jeffersontown Elementary.

On August 15, 2003, Denise married Michael T. Alexander, who is Deputy General Counsel at the Governor's Office. On that date, Denise became the stepmother of Michael's four children: Kenny (age 18); Michala (age 19); Shonda (age 27), and, Mike (age 29). As a result of her marriage, Denise also has two grandsons: Brandon (age 3) and Ke'Vantae (1 month). There will be an addition to the family in January

when Denise's step-granddaughter is born.

Denise has already proved herself to be hardworking. She says of her new job, "The knowledge and wisdom I have gained from my experiences are resources I value and want to share with others. I enjoy working at the Commission because it affords me the opportunity to do so. I also enjoy it because people with integrity and character, qualities that are extremely important to me, surround me. I consider it an honor, indeed, to have been selected to be a part of the Commission's team of professionals."

In her spare time, she enjoys dinner and dancing with Michael T.; watching Disney movies with Faith, mediating disputes; listening to "the Oldies" and contemporary jazz; and, studying materials for her spiritual and professional growth. She is a member of St. Stephen Baptist Church.

Welcome Denise!

## UNLICENSED BROKERAGE

### *Commission Issues Cease-&-Desist Orders*

The Commission has numerous unlicensed brokerage cases currently under investigation. In recent past, the Commission has ruled on numerous unlicensed brokerage cases and takes this matter very seriously. Since this practice is a crime in Kentucky, the Commission's new policy is to refer all such cases for criminal prosecution.

Below is a list of companies and/or individuals who have been found in violation of Kentucky's brokerage laws and have been issued cease-and-desist orders.

Remember, if you discover that any of these companies or individuals are engaged in real estate brokerage in Kentucky, please report it to the Commission immediately.

#### **CEASE-&-DESIST ORDERS ISSUED TO:**

<b>James Carmichael</b> Columbus, OH	<b>Richard Rowe</b> Stanford, KY
<b>Jonathan Lee</b> Columbus, OH	<b>Jullian J. Studley, Inc.</b> Washington, DC
<b>John Sebree</b> Indianapolis, IN	<b>Price Waterhouse</b> New York, NY
<b>Clarence Chism</b> Lancaster, KY	<b>Jonathan Hipp</b> Vienna, Virginia
<b>George Cappony</b> Madisonville, LA	<b>James Bullard</b> <b>Paul Weaver</b> Fletcher Bright Co. Chattanooga, TN
<b>Marianne Rasmus</b> Buford, GA	<b>Jim Doss</b> EZ Homesales.com Louisville, KY
<b>Tom Hobbs</b> Eagle Mortgage, Inc. Las Vegas, NV	

#### **CEASE-&-DESIST ORDERS ISSUED TO THE FOLLOWING INDIVIDUALS WHO ARE NOW LICENSED IN KENTUCKY**

<b>Richard Sammer</b> (Currently Licensed) Nashville, TN	<b>Pat Duffy</b> (Currently Licensed) Atlanta, GA
<b>Michael Taylor</b> (Currently Licensed) Nashville, TN	

*\*Please Note - All of the orders were issued in 2002-2003.*

## Unlicensed Assistants CAN

**Hold an open house and distribute literature so long as the seller agrees in writing.**

**Copy a key of a piece of property at the direction of the supervising licensee.**

**Open the door of a property with the consent of the owner.**

**Answer whether a piece of property is listed with the company.**

**Answer whether the property is under contract.**

**Answer whether the property has closed.**

**Give out the listing price of the property.**

**In writing give out the square footage, number of rooms of the property, etc.**

**Be pictured in advertisements as long as it is clear that the unlicensed assistant is not a real estate licensee.**

**Contact consumers for the purpose of setting up appointments.**

**Receive confidential information about a piece of property as long as he or she only discloses it to the supervising licensee.**

## Unlicensed Assistants CANNOT

**Show property or answer any questions about the property.**

**Negotiate the terms of a contract.**

**Complete offers or contracts.**

**Disclose confidential or non-public information about a property that is not available to the general public.**

**Attend a real estate closing without a supervising licensee.**

**Access trade organization information if the supervising licensee is not a member of that trade group**

**Write or place advertisements without supervising licensee's review.**

**Express mater.opinions about a particular real estate transaction to anyone other than the supervising licensee.**

**Interpret contractual language for others.**

**Represent that he/she is a real estate licensee.**



# LICENSEES IN THE MORTGAGE INDUSTRY

By: Gary Lee Thurman

Certified Examiner

Department of Financial Institutions

The Department of Financial Institutions, which governs the mortgage industry for the Commonwealth of Kentucky, receives numerous inquiries from real estate licensees concerning the ability to act as a Mortgage Broker. Kentucky Revised Statutes Chapter 294, which is on the Department's website at [www.dfi.ky.gov](http://www.dfi.ky.gov), provides a couple of options for licensees. There is nothing in the statutes prohibiting a real estate licensee to act as a mortgage broker, **IF** he or she is legally licensed or registered as follows.

First, let us look at the state statutes. Pursuant to KRS 294.030(1)(a), "It is unlawful for any person to transact business in this state, either directly or indirectly, as a mortgage loan company or mortgage loan broker if he is not licensed under this chapter and registered in accordance with KRS 294.255, unless that person is "EXEMPT" under KRS 294.020 and, if required by KRS 294.020(3) to file a claim of exemption, has filed a claim of exemption and the filed claim of exemption has been allowed by the commissioner." Pursuant to KRS 294.020(2)(d), "Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate" and pursuant to 294.020(3), "Any person relying upon an exemption under subsection . . . (2)(d) of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he shall not disallow an exemption that is validly claimed." What does all of this mean to Kentucky licensees?

**THE EXEMPTION** - This is a mechanism used by licensees who **ONLY** want to offer their real estate clients a "convenience" of being able to not only sell them a new home but also find them financing. This Exemption can be given to either an individual licensee or a corporate entity. As the statute states, it is to be used **ONLY** when the licensee "renders the services in the course of his or her practice as a real estate broker or real estate associate". This exemption **DOES NOT** allow a licensee to advertise to the general public as a Mortgage Broker and **DOES NOT** allow a licensee the ability to "broker" a mortgage loan to

someone who is not purchasing a house through a licensee. A number of real estate licensees have taken advantage of this exemption which **DOES REQUIRE** a formal Registration with the Department and the payment of a one-time \$150.00 registration fee.

**THE LICENSE** - Should a licensee decide to expand his or her business and want to be able to offer both real estate services and mortgage services to the general public, a Mortgage Broker license would be required. This enables the licensee to advertise as a Mortgage Broker in addition to his or her real estate business and provide mortgage broker services to anyone, whether or not they purchase a home through a licensee. The licensing process to become a Mortgage Broker is similar to that of becoming a licensee. The application, which is also on our website, lists the items that one must submit to the Department, such as a \$750 investigation/license fee, corporate papers, CPA financial statements, resumes, a \$50,000 Surety Bond and proof of completion of an approved 30-hour Educational Course. Once the Department receives a **COMPLETE** application, it takes approximately 30-45 days for a license to be issued. The Department examines each licensed broker, at the broker's expense, on an average of once every 12-18 months. Licenses are annually renewable June 30, no matter when you receive a license and the surety bond must be maintained as long as you have a license. A physical office, **IN KENTUCKY**, open to the general public during posted business hours is required. Another requirement for all mortgage brokers and loan officers is an **ANNUAL**, individual registration and completion of the continuing education requirement. The first registration is due by July 1, 2004. All licensed mortgage brokers and loan officers (of both licensed mortgage companies and HUD-exempt companies) must complete a formal registration with the Department which include 12 hours of continuing education, a criminal background report and a \$50 registration fee. A list of the approved continuing education courses and vendors are on our website.

Kentucky Revised Statutes Chapter 294 had numerous revisions which became law as of June 24, 2003. Anyone interested in the mortgage industry is advised to read through this Chapter in detail. Any licensing questions can be directed to the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, or you can call Gary Thurman at 800-223-2579.



# Disciplinary Actions

**Ronald David Kincer**

(Lexington) Case No. 02-0152

**Violation:** Mr. Ronald David Kincer stipulates to a violation of KRS 324.160(4)(v) for conduct which constitutes improper, fraudulent or dishonest dealing for taking a Maker's Mark collector's edition bottle from the home of a seller whose house was listed through another agent.

**Disposition:** Mr. Kincer agreed to have his license suspended for a period of one (1) year. Upon the expiration of the one (1) year period of suspension, Mr. Kincer may petition for reinstatement of his real estate license; however, he must first submit to a criminal background check.

**William E. Brown**

(Middlesboro) Case No. 03-0042

**Violation:** Mr. Brown entered into a Settlement Agreement in Case #02-0056, wherein he agreed to pay \$2,175.00 to the complainant, Mr. Wang. The Commission received a second complaint against Mr. William E. Brown alleging that he has breached the Settlement Agreement by failing to make the \$100.00 per month payments as agreed. Mr. Brown asserts that his financial situation makes it impossible for him to pay \$2,175.00 to Mr. Wang as restitution.

**Disposition:** Mr. Brown agrees to voluntarily surrender his Kentucky real estate license to the Commission, in lieu of revocation, and he may not petition for reinstatement for a minimum period of three (3) years from the date of the Settlement Agreement. The Commission will not consider reinstatement for Mr. Brown unless he has reimbursed the Recovery Fund in full, plus interest at the rate of ten percent (10%) per annum, pursuant to KRS 324.420(3). He must also

present proof of his honesty, truthfulness, and good reputation pursuant to KRS 324.045 and retake the written examination referred to in KRS 324.045(2) and provide proof to the Commission that he has successfully completed the exam. He shall also submit the results of his criminal background check to the Commission and receive a formal reprimand, which shall be placed in his file. Thirty days after the Final Order, Complainant Wang will be issued a Recovery Fund payment in the amount of \$2,175.00 as full payment of his damage claim against Respondent Brown.

**Howard Tomes** (Leitchfield)

Case No. 02-0067

**Violation:** Mr. Tomes violated KRS 324.160(4)(b) for making a substantial misrepresentation and failing to disclose known defects that substantially affect the value of the property. Mr. Tomes also violated KRS 324.160(4)(u), specifically 201 KAR 11:400 for failing to give his client a completed Agency Disclosure Form.

**Disposition:** Mr. Tomes' license was placed on probation for a period of twelve (12) months and Mr. Tomes was ordered to attend twelve (12) hours of continuing education in topics of agency and drafting contracts to purchase.

**Fred W. Swarts** (Lexington)

Case No. 02-0165

**Violation:** Mr. Swarts stipulated to a violation of 201 KAR 11:121; Section 1(4)(b),(c),(d) and (e) for failing to fulfill all of his fiduciary duties to his client. He also violated 201 KAR 11:045 for failing to submit all written offers to his client without delay and KRS 324.160(4)(r) for failing to provide copies of documents bearing his client's signature and KRS 324.160(4)(w) for gross negligence.

**Disposition:** Mr. Swarts agrees to accept a formal reprimand and to have his license placed on probation for a period of one (1) year and he shall maintain a "commercial/business transaction log" for all such transactions and shall permit the Commission's agents to inspect, copy or obtain the log and any real estate records, upon request, for inspection. Respondent Swarts also agreed to allow the Commission to conduct periodic review and/or audit his real estate transaction file(s) and/or escrow records.

**Dale R. Harris** (Lowes)

Case No. 03-0017

**Violation:** Mr. Harris stipulated to a violation of 201 KAR 11:250 for failing to produce a valid written lease agreement for a property he rented on behalf of a seller.

**Disposition:** Mr. Harris agrees to accept a formal reprimand from the Commission, which will be placed in his file. He further agrees to have his license placed on probation for a period of twelve (12) months from the date of the Final Order. He also agrees to attend twelve (12) hours of continuing education within twelve (12) months of the final Order. The courses shall be in agency or contracts.

**David Bradley** (Louisville)

Case No. 02-0099 & 02-0123

**Violation:** Mr. Bradley stipulated to a violation of KRS 324.160 (4)(e) for failing to disclose in writing his status as a licensee in a contract to purchase.

**Disposition:** Mr. Bradley agreed to attend three (3) hours of continuing education in license law in addition to any hours already required by law. He also agreed to accept a formal reprimand from the Commission, with a letter to be placed in his file.

## ***Commission Holds 5th Annual Half-Century Awards Reception***

On October 16, 2003, the Commission held its 5th Annual Half-Century Awards Reception at the Louisville Marriott East Hotel. This event honors licensees who have held a real estate license for 50 years. The honorees this year were; Simon J. "Doc" Collins, Charles V. Gribbons and Mary Ellen Houston.

Honorees, guests and past recipients were treated to a breakfast buffet .

Mr. Ron Wolf, Intergovernmental Relations Manager for Metro Louisville Government attended the event and presented the honorees with a proclamation from the City of Louisville.

The Commission would again like to thank Mr. Collins, Mr. Gribbons and Ms. Houston for their 50 years of dedication to the real estate industry. Congratulations honorees.



Pictured above right to left, Ron Wolf of Metro Government, Honoree Charles V. Gribbons and Chairman Betty Kaiser

## **BUYER'S AGENCY**

*Continued from Page 6*

the contract contingent upon the sale of that home. Do not rely upon the financing provision to cover this situation. If the buyer is using VA or FHA financing, make that clear in the purchase contract. If the buyers are receiving part of their money from a gift or stocks or a retirement account, state that plainly in the contract. Do not say that the buyer is paying cash unless the buyer has that cash in his or her hand. Read over the contract to make sure everything is complete and that everything is included.

While many of these steps may seem obvious, they are all very important. A deal can be made or broken based upon how carefully the buyer's agent filled out the contract or how diligent the buyer's agent was in assisting the buyer with meeting deadlines and the like. Your clients will be very happy with you if their contract goes smoothly and there are no major problems created by a sloppy contract or a missed deadline. By the same token, your client will be very unhappy if there are unchecked boxes, missed deadlines and the like.

## **Resident Screening**

*Continued from Page 5*

this group as well. The Landlord and Tenant Act, which is in effect in Jefferson and Fayette Counties and several cities in Northern Kentucky, is silent on procedures for the handling of a rent deposit. The Act addresses security deposits only which may allow for greater flexibility for the property owner or manager in the handling of this type of deposit. It should be written in your lease that the rent deposit cannot be applied towards back rent in an eviction prior to the resident vacating. Consult your attorney to be certain.

Most companies allow for a qualified person other than the renter, typically referred to as a guarantor or co-signer, to sign backing the performance of the renter. In these cases, be careful not to ignore the behavioral history of the applicant him or herself. While payment history may be less of a factor, causing other problems can be just as troublesome. Also, be aware that if the guarantor lives in another jurisdiction, the enforcement against such a guarantor may be more difficult.

There are now a number of online screening services available to owners. Some of these companies have created a database for their owners/managers to use for listing persons who are under eviction or who have just skipped. These databases can reveal a newly turned bad renter before the court records are created which the credit reporting companies make available on credit reports. In other words, Johnny Neverpayrent may not show up on the credit file until a month after he has already relocated to someone else's (and hopefully not your) rental unit. This type

of database may trigger an alarm before he gets his foot in your door. Of course, the credit file should show his current address, which presumably would lead to a bad rental reference and a likely rejection.

Keep in mind that the Fair Credit Reporting Act (FCRA) requires an "adverse action" letter to be given to an applicant not only for the rejection of an applicant due to information received from a credit report but for any additional requirements above the norm given by that owner to an applicant because of a marginal score on an application. These actions include, but are not limited to: requiring a co-signer or guarantor on the lease, requiring an extra or higher deposit that would not be required for other applicants, or raising the rent to a higher amount than another applicant. For more information on this subject visit, <http://www.ftc.gov/bcp/online/pubs/buspubs/landlord.htm>.

Always require picture identification at the time of the application. Identity theft is becoming increasingly prevalent, and this is one simple precaution that can help.

When changing the focus of a company or individual investor's screening criteria, it is crucial that it be documented as to when it took effect and that the new screening criteria are written. Be careful to insure that no change has any discriminatory effect against any of the protected classes. When changing your screening criteria, it is always a good idea to consult your attorney and/or the Commission on Human Rights.

During tough rental times steps can be taken to help reduce higher vacancy rates. Taking another look at "marginal" applicants is one tool that property owners and managers should consider.



## **PRINT ADVERTISEMENTS**



KRS 324.117 requires licensees to advertise in the name of their real estate company or their principal broker. Any advertisement that does not include this information is considered false, misleading or deceptive. The Commission receives numerous advertisements each week that are not in compliance with this statute. Even one such advertisement is a violation of license law, and the Commission is now taking a much stronger approach.

All violators will have a complaint filed against them and, upon proof, will be assessed a fine between \$500 - \$1000 and three (3) hours of continuing education in law. The Commission is sending a memo to all past violators to inform them of this new policy.

## **Refunding Up-Front Fees**

In some instances, an agent lists property and takes an up-front fee. Then the seller cancels the listing and the listing agent will refund the up-front fee, so long as the listing agent can refer that seller to a specific agent with another company.

The Commission ruled that offering or giving a refund of an up-front fee in exchange for a referral to another agent constitutes an inducement and is illegal under 201 KAR 11:121.

## **Advertising On eBay**

The Commission has looked into home advertisements on eBay. If the property is listed, the eBay advertisement must comply with KRS 324.117. The real estate company name or the principal broker name must be included in those advertisements, even if you, the licensee, have not personally placed the advertisement.

## **ATTENTION ALL EDUCATORS**

The Educators' Conference is being held November 13 & 14 at the Holiday Inn Hurstbourne. Immediately following is the Real Estate Educators' Association Road Show on November 14 & 15.  
**CALL THE COMMISSION FOR DETAILS**

Kentucky Real Estate Commission  
10200 Linn Station Road, Suite 201  
Louisville, KY 40223  
Phone: (502) 425-4273 Fax: (502) 426-2717  
Toll Free: 1-888-373-3300  
Fax-On-Demand: 1-888-KREC-FAX  
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**November 11, 2003  
(Veteran's Day)**

**November 27-28, 2003  
(Thanksgiving)  
&  
Christmas & New Year's**